

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

29976

FILE:

B-216176

DATE: December 11, 1984

MATTER OF:

Beta Construction Company

DIGEST:

Question regarding bidder's status as small business under total small business set-aside for construction services is not matter of bid responsiveness since question does not relate to bidder's commitment or obligation to provide required services in conformance with material terms of solicitation, but rather to bidder's status and eligibility for award. Thus, contracting agency was correct in permitting bidder to correct erroneous certification indicating bidder was large business in order to reflect bidder's actual status as small business.

Beta Construction Company protests any award to Roofing & Siding Contractors, Inc. (RSC) under invitation for bids (IFB) No. DTCG40-84-B-0266 issued by the United States Coast Guard. The IFB, for the installation of a roof and related construction services, was set aside for small business concerns. Beta contends that the agency should have rejected RSC's bid as non-responsive because RSC represented itself to be a large business in its bid. Beta also alleges that RSC's bid price is too low to permit it to perform the contract requirements. We deny the protest.

Included as part of RSC's bid was a standard certification concerning each bidder's size status. RSC certified in its bid that it was not a small business concern. The contracting officer suspected a mistake in RSC's representation that it was not a small business and requested RSC to verify its small business status. RSC responded that it had mistakenly certified, since it was a small business. The contracting officer then referred the matter to the Small Business Administration (SBA) which concluded that RSC was a bona fide small

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business. The Coast Guard believes that RSC's bid properly can be accepted. We agree.

RSC's failure to correctly certify its status as a small business did not render its bid nonresponsive. To be considered responsive, a bid must constitute an unequivocal offer to provide the required product or service in conformance with the material terms and conditions of the solicitation. J. Baranello and Sons, 58 Comp. Gen. 509, 514 (1979), 79-1 CPD ¶ 322. Here, there is no question concerning RSC's obligation to provide the required construction services in accordance with the material terms and conditions of the solicitation. Rather, the only question which exists is whether RSC is a small business under the size standards established by the SBA. See 13 C.F.R. § 121.3 et seq. (1984). This question relates solely to RSC's status and its eligibility for award under the set-aside, and does not reflect upon RSC's commitment to provide the required construction services. Therefore, it does not involve a matter of responsiveness. Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD ¶ 542.

Further, the contracting officer, by referring the matter to the SBA prior to permitting correction of the mistaken representation, was merely following our decision in Jimmy's Appliance, supra, in which we stated:

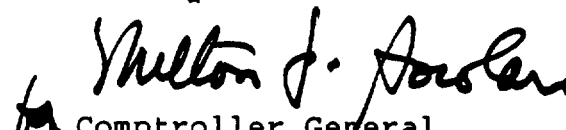
"[W]hen a bidder asserts that it erroneously certified itself as a large business on a small business set-aside, we believe there is enough doubt as to the bidder's actual status to warrant referral of the matter to the SBA, which is empowered to make conclusive determinations regarding the size status of bidders under 15 U.S.C. § 637(b)(6) (1976). See Cabrillo Food Service Inc., B-185172, August 6, 1976, 76-2 CPD 107."

See also Timberland Paving & Construction Co., B-205179, June 21, 1982, 82-1 CPD ¶ 608.

Concerning Beta's allegation the RSC's bid price is too low, the fact that a bid may be below cost does not provide a valid basis to challenge an award to a firm that is determined responsible. See Technical Food Services, Inc., B-203742.2, Sept. 15, 1981, 81-2 CPD ¶ 219. If the Coast

Guard finds RSC responsible, which it must do before awarding any contract, this would constitute an affirmative determination of responsibility. Our Office does not review such determinations in the absence of a showing of possible fraud or bad faith by procurement officials or misapplication of definitive responsibility. Metermod Instrument Corporation, B-211907, Apr. 19, 1984, 84-1 CPD ¶ 448. Neither exception is present here.

Accordingly, RSC was properly determined to be eligible for award and the protest is denied.


Comptroller General
of the United States